

6. Defendant is a corporate entity headquartered in Philadelphia, PA.
7. Plaintiffs are employees covered by the FLSA and PMWA.
8. Defendant is an employer covered by the FLSA and PMWA.

FACTS

9. Defendant is “one of largest behavioral health and social services agencies in the region.”¹

10. Defendant, operating through a contract with the City of Philadelphia and overseen by the City’s Department of Human Services, provides foster care services within geographic regions designated as “CUA 1” and “CUA 7.”

11. In providing the above foster care services, Defendant employs **Case Managers**.

The City describes the Case Manager position as follows:

If it is determined that DHS services are needed, the child will be assigned a CUA case manager. This person will be the main point of contact for you and your foster child. The case manager: Sets up meetings and coordinates with other professionals working with your family[;] Attends court hearings[;] Sets up a visitation schedule with the child’s biological parents, when possible[; and] Checks on children in your care regularly.²

12. Devine has worked for Defendant as a Case Manager since around November 2018.

13. Turner worked for Defendant as Case Manager from around December 2019 until around March 2020.

14. Because the Case Manager position does not require specialized academic training, Case Managers have college degrees in a wide variety of fields.

¹ <http://netcenters.org/about-us/overview/> (last viewed May 21, 2020).

² <https://www.phila.gov/departments/departments-of-human-services/foster-care/who-is-involved-in-your-foster-childs-case/> (last viewed May 21, 2020).

15. During the three-year period covered by this lawsuit, Case Managers have regularly worked over 40 hours per week. For example, it is/was not unusual for Devine and Turner to work over 50 hours per week as Case Managers.

16. Prior to July 1, 2019, Defendant paid Case Managers annual salaries of around \$45,000.

17. Prior to July 1, 2019, Defendant, as a matter of company policy, never paid Case Managers overtime compensation for hours worked over 40 per week.

18. Since July 1, 2019, Defendant has paid Case Managers around \$21 per hour.

19. Since July 1, 2019, Defendant has paid Case Managers time and one-half overtime compensation for *some* of their hours worked over 40 per week. Other overtime hours, however, have gone unpaid because Defendant's administrators and supervisors, *inter alia*: (i) refuse to "approve" overtime pay for hours that are overtly and necessarily worked by Case Managers; (ii) instruct Case Managers to under-report their work hours for payroll purposes; (iii) make downward adjustments to Case Managers' reported work hours; and (iv) ignore the obvious fact (as exemplified by, *inter alia*, computer log-in data, telephone calls, and email correspondence) that Case Managers regularly work during evenings and weekends.

20. In providing the foster care services referenced in paragraph 10, Defendant employs **Aftercare Workers**. According to Defendant, Aftercare Workers "support[] families who have been successfully discharged from DHS/CUA formal case-management services."³

21. Turner worked for Defendant as an Aftercare Worker from around February 2019

³[https://jobs.ecipay.com/prod/net/EmpApp/\(X\(1\)S\(yd10nel4shhxxr3vmhjz4b1y\)\)/JobList.aspx?ID=Y7FqLA%2fZ%2f9Bt7wIx%2b1%2b%2fmA%3d%3d&REQID=CiekDPLFsbLgApvQ6PdJJA%3d%3d](https://jobs.ecipay.com/prod/net/EmpApp/(X(1)S(yd10nel4shhxxr3vmhjz4b1y))/JobList.aspx?ID=Y7FqLA%2fZ%2f9Bt7wIx%2b1%2b%2fmA%3d%3d&REQID=CiekDPLFsbLgApvQ6PdJJA%3d%3d) (last viewed May 21, 2020).

until around December 2019.

22. Because the Aftercare Worker position does not require specialized academic training, Aftercare Workers have college degrees in a wide variety of fields.

23. During the three-year period covered by this lawsuit, Aftercare Workers have regularly worked over 40 hours per week. For example, it was not unusual for Turner to work over 50 hours per week as an Aftercare Worker.

24. Prior to July 1, 2019, Defendant paid Aftercare Workers annual salaries of around \$35,000.

25. Prior to July 1, 2019, Defendant, as a matter of company policy, never paid Aftercare Workers overtime compensation for hours worked over 40 per week.

26. Since July 1, 2019, Defendant has paid Aftercare Workers around \$17 per hour.

27. Since July 1, 2019, Defendant has paid Aftercare Workers time and one-half overtime compensation for *some* of their hours worked over 40 per week. Other overtime hours, however, have gone unpaid because Defendant's administrators and supervisors: (i) refuse to "approve" overtime pay for hours that are overtly and necessarily worked by Aftercare Workers; (ii) instruct Aftercare Workers to under-report their work hours for payroll purposes; (iii) make downward adjustments to Aftercare Workers' reported work hours; and (iv) ignore the obvious fact (as exemplified by, *inter alia*, computer log-in data, telephone calls, and email correspondence) that Aftercare Workers regularly work during evenings and weekends.

CLASS/COLLECTIVE ACTION ALLEGATIONS

28. Plaintiffs bring their FLSA claim as a collective action pursuant to 29 U.S.C. §216(b) and bring their PMWA claim as a class action pursuant to Federal Rule of Civil Procedure 23. Devine and Turner sue on behalf of all Case Managers employed by Defendant

within the past three years. In addition, Turner sues on behalf of all Aftercare Workers employed by Defendant within the past three years.

29. Plaintiffs' FLSA claim should proceed as a collective action because they and other putative collective members, having worked pursuant to the common payroll policies and practices described herein, are "similarly situated" as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

30. Class action treatment of Plaintiffs' PMWA claim is appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23's class action requisites are satisfied.

31. The class, upon information and belief, includes over 100 individuals, all of whom are readily ascertainable based on Defendant's payroll records and are so numerous that joinder of all class members is impracticable.

32. Plaintiffs are class members, their claims are typical of the claims of other class members, and they have no interests that are antagonistic to or in conflict with the interests of other class members.

33. Plaintiffs and their lawyers will fairly and adequately represent the class members and their interests.

34. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendant's common payroll policies and practices described herein. The legality of these policies will be determined through the application of generally applicable legal principles to common facts.

35. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members and because a class action is superior to other available methods for the fair and

efficient adjudication of this litigation.

COUNT I
(Alleging FLSA Violations)

36. The FLSA requires that employees receive overtime compensation “not less than one and one-half times” their regular pay rate for hours worked over 40 per week. *See* 29 U.S.C. § 207(a)(1).

37. Defendant violated the FLSA by failing to pay Plaintiffs and the FLSA collective overtime compensation for all hours worked over 40 per week.

38. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions and, as such, willfully violated the FLSA.

COUNT II
(Alleging PMWA Violations)

39. The PMWA requires that employees receive overtime compensation “not less than one and one-half times” the employee’s regular pay rate for hours worked over 40 per week. *See* 43 P.S. § 333.104(c).

40. Defendant violated the PMWA by failing to pay Plaintiffs and the Rule 23 class overtime compensation for all hours worked over 40 per week.

JURY DEMAND

Plaintiffs demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and other members of the class/collective, seek the following relief:

- A. Unpaid overtime wages and prejudgment interest;
- B. Liquidated damages to the fullest extent permitted under the FLSA;

- C. Litigation costs, expenses, and attorneys' fees; and
- D. Any other relief the Court deems just and proper.

Date: May 22, 2020

Respectfully,


s/ Peter Winebrake

Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491

Plaintiffs' Counsel

CONSENT TO BECOME PARTY PLAINTIFF

I hereby consent, pursuant to Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), to become a party plaintiff in the accompanying FLSA action. I understand that I will be bound by the judgment of the Court on all issues in this case.

DocuSigned by:

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Signature

Katie Devine

Print Name

CONSENT TO BECOME PARTY PLAINTIFF

I hereby consent, pursuant to Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), to become a party plaintiff in the accompanying FLSA action. I understand that I will be bound by the judgment of the Court on all issues in this case.

DocuSigned by:

82E9406BA498496...

Signature

Lavar Turner

Print Name

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KATHERINE DEVINE and LAVAR TURNER, on behalf of themselves and others similarly situated

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19025; Ph: (215) 884-2491; Other Counsel Listed in Complaint

DEFENDANTS

NORTHEAST TREATMENT CENTERS, INC.

County of Residence of First Listed Defendant Philadelphia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|--|--|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Fair Labor Standards Act

Brief description of cause:

Failure to pay overtime

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

MAY 22, 2020

SIGNATURE OF ATTORNEY OF RECORD

Att. Wulke

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 259 Rosemar Street, Philadelphia, PA 19120 / 2619 West Seltzer Street, Philadelphia, PA 19132

Address of Defendant: 499 North 5th Street, Philadelphia, PA 19123

Place of Accident, Incident or Transaction: Philadelphia, PA

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 05/22/2020

Ch. Wulke

Attorney-at-Law / Pro Se Plaintiff

PA-80496

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☒ 11. All other Federal Question Cases

(Please specify): Fair Labor Standards Act

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability – Asbestos
- ☐ 9. All other Diversity Cases

(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Peter Winebrake, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 05/22/2020

Ch. Wulke

Attorney-at-Law / Pro Se Plaintiff

PA-80496

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

KATHERINE DEVINE, et al.

CIVIL ACTION

v.

NORTHEAST TREATMENT CENTERS,
INC.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ~~()~~

MAY 22, 2020
Date

(215) 884-2491

Telephone

PETER WINEBRAKE
Attorney-at-law

(215) 884-2492

FAX Number

PLAINTIFFS
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E-Mail Address